

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:13-cr-646-WHW

UNITED STATES OF AMERICA, :
v. : TRANSCRIPT OF PROCEEDINGS
DANIEL JENKINS, : - Sentencing Hearing -
Defendant. :
- - - - -

Newark, New Jersey
March 11, 2014

B E F O R E:

THE HONORABLE WILLIAM H. WALLS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

UNITED STATES ATTORNEY'S OFFICE
BY: JOSE ALMONTE
Assistant U.S. Attorney
For the Government

MICHAEL V. GILBERTI, ESQ.
For the Defendant

Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record as
taken stenographically in the above entitled proceedings.

S/WALTER J. PERELLI

WALTER J. PERELLI, CCR, CRR
Official Court Reporter

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, NEWARK, NJ

1 THE COURT: Today is the scheduled sentence day for
2 Daniel Jenkins.

3 Enter your appearances.

4 The rest of you may be seated.

5 MR. ALMONTE: Good morning, your Honor. Assistant
6 United States Attorney Jose Almonte, on behalf of the
7 Government.

8 MR. GILBERTI: Good morning, your Honor. Michael
9 Gilberti on behalf of Mr. Jenkins, who is standing to my left.

10 THE COURT: And tell me, Counsel, has your client read
11 and reviewed the Presentence Investigation Report?

12 MR. GILBERTI: Yes, he has.

13 THE COURT: And as I understand and read, according to
14 the Sentencing Guidelines, there is an offense level of 31 with
15 a Criminal History Category of VI, which exposes your client to
16 custody between 188 to 235 months. Do you challenge that?

17 MR. GILBERTI: Yes, we have, your Honor.

18 THE COURT: Come to the lectern and let me hear from
19 you on his behalf.

20 You may be seated, sir.

21 MR. GILBERTI: Your Honor, we make really two
22 challenges. His plea agreement, the underlying offense was a
23 Level 23, Criminal History V. And we kept open the ability to
24 challenge the possibility that the Probation office would find
25 him as a career offender.

1 What we have here, your Honor, is the career
2 offender -- you have discretion whether or not to rule that
3 he's a career offender. And in this case, your Honor, what we
4 have here is, we're in an era where Congress is conducting
5 hearings on the Draconian results of drug sentencing over the
6 years. And in this case, your Honor, the Government wants to
7 sentence him to 188 to 235 months -- that's 16 and a half to 20
8 years -- for a criminal history that includes less than a pound
9 of drugs. In fact, it's probably less than a half a pound.

10 THE COURT: Wait, stop, stop. Slow, slow so that we
11 can make sure that you and I are on the same page as well as
12 the Assistant United States Attorney.

13 I just want to make sure that -- your client, as I
14 understand it, is 40 years of age?

15 MR. GILBERTI: Yes, your Honor.

16 THE COURT: Is that correct?

17 MR. GILBERTI: That's correct, your Honor.

18 THE COURT: Okay. And now, turning to page -- page 12
19 of the Presentence Investigation Report.

20 MR. GILBERTI: I have it, your Honor.

21 THE COURT: And we'll run over what are juvenile
22 matters. Okay.

23 MR. GILBERTI: Hang on a second, your Honor.

24 THE COURT: And that takes us up to page 15. Right?

25 MR. GILBERTI: Correct.

1 THE COURT: Am I right so far?

2 MR. GILBERTI: Yes, you are.

3 THE COURT: All right.

4 MR. GILBERTI: Correct.

5 THE COURT: Now we get to paragraph 58, we have a
6 conviction for fraud. Right?

7 MR. GILBERTI: Correct.

8 THE COURT: We go to paragraph 60 -- by the way, that
9 is in November of 1991 when he was age 18. Then we go to page
10 16, and at the age of 19, in March of 1993 he's found guilty of
11 receiving stolen property by the New Jersey Municipal Court.
12 Is that correct?

13 MR. GILBERTI: Correct.

14 THE COURT: Then we go to November of 1993, in the
15 Superior Court of New Jersey in Hudson County vicinage, he's
16 convicted of aggravated assault, admitted to simple assault
17 which is -- which subjects him to one year of probation.
18 Right?

19 MR. GILBERTI: Correct.

20 THE COURT: He's thereafter arrested, as reflected by
21 paragraphs 63 and 64, for a history which I don't know about.

22 Does the U.S. Attorney know anything about 63 and 64?

23 MR. ALMONTE: No, your Honor, other than --

24 THE COURT: All right. Other than what's reflected in
25 the paragraph. Is that correct?

1 MR. ALMONTE: Correct, your Honor.

2 THE COURT: Paragraph 65, at the age of 21, in June of
3 1995, he's found guilty of distribution of CDS within 1,000
4 feet of school property, again by the Hudson County vicinage of
5 the Superior Court. He's sentenced to five years in State
6 Prison. He's paroled in June of 1997, and parole is revoked in
7 June of 1999. And that's discussed in paragraphs 66 and 67.

8 Am I right so far?

9 MR. GILBERTI: That's correct, your Honor. And that
10 involved less than a half an ounce of drugs.

11 THE COURT: All right. But I'm talking about the
12 crime now. Okay?

13 MR. GILBERTI: I understand.

14 THE COURT: Fair enough?

15 MR. GILBERTI: Fair enough.

16 THE COURT: In paragraph 68, he's originally charged
17 with aggravated assault on a law enforcement officer, but then
18 it's amended to "tried to prevent official action," for which
19 he received six months incarceration by the Superior Court of
20 Hudson County. That's reflected in the following paragraphs:
21 68a. and b. and c.;

22 Then in paragraph 70, he's originally charged with
23 resisting arrest but it's amended to disorderly conduct for
24 which he gets six months. That's a disorderly persons;

25 And then at age 24 he's consuming alcohol in a public

1 place and he's charged with an ordinance violation in paragraph
2 74.

3 But getting to a more substantive issue, he's
4 thereafter found guilty of possession of CDS with intent to
5 distribute within 1,000 feet of school property in 2002, April
6 14, at the age of 28. He's given five years special probation,
7 but he's found in violation of that probation on April 8th and
8 he's resentenced to five years in State Prison with a
9 three-year parole ineligibility; and

10 in paragraph 80 he goes across the river and is found
11 guilty of criminal possession of CDS by the New York County
12 Supreme Court, for which he gets five years probation.

13 For some reason this reflects he has an open bench
14 warrant but I don't know why, but be that as it may. And there
15 he's charged with possession of narcotics with the intent to
16 sell. This arises out of that. He's charged with being found
17 at 135th and Amsterdam in New York.

18 Now, the point is that I'm looking at -- there's some
19 confusion here as far as I'm concerned. Paragraph 83, there's
20 a reference made to the Southern District of New York Federal
21 Court, but I thought all of this dealt with Supreme Court of
22 New York.

23 Can you enlighten me on this?

24 MR. GILBERTI: I can't, your Honor. We were taken
25 by --

1 THE COURT: You see the collateral response of the
2 Probation Office of the Southern District indicates the
3 defendant absconded from the above probation sentence and the
4 bench warrant remains active.

5 Unless it's a misprint as far as this action of
6 criminal possession of CDS occurred not in the Supreme Court
7 but in the Southern District jurisdiction.

8 MR. GILBERTI: Well, it might have been a UFAB, your
9 Honor. They may have taken the warrant to the Southern
10 District and gotten a Uniform -- UFAB application.

11 THE COURT: Is that what they did?

12 THE PROBATION OFFICER: No, Judge. This paragraph
13 just simply means that we asked our counterparts in Manhattan
14 to research the warrant for us. There is a warrant from New
15 York County Supreme Court.

16 THE COURT: Oh. You just asked the Southern District
17 to do that?

18 THE PROBATION OFFICER: Yes.

19 THE COURT: Okay. Fair enough. All right. Okay.

20 Then again in October of 2002 he's found guilty of
21 possession of CDS, for which he is given five years probation,
22 but then later on that probation is revoked and he's sentenced
23 to five years with a three-year ineligibility, which relates
24 also to the episode of April 14, 2002. The sentence applied to
25 both instances. All right?

1 MR. GILBERTI: Correct.

2 THE COURT: Okay. Then back in December of 2002 he is
3 again confronted with possession of CDS with attempt to
4 distribute within 1,000 feet of school property in the Superior
5 Court of Hudson County, for which he again receives five years
6 probation. And then, as with the other two matters, he's found
7 guilty in April of 2005 of violation of probation and he's
8 sentenced to five years with a three-year period of
9 ineligibility, parole ineligibility. So, in other words, he
10 has a threesome there: He has three separate convictions which
11 merge into a violation of probation.

12 Am I right?

13 MR. GILBERTI: There were five, your Honor. There
14 were five in total.

15 THE COURT: Well, we're getting to it slowly, but
16 surely we're getting there. All right.

17 MR. GILBERTI: The tally sheet right now is three.

18 THE COURT: All right.

19 Then we have a loitering to obtain and sell CDS in
20 October of 2003, which again is the subject of this matter of
21 probation revocation and sentencing on April 2005. Right?

22 MR. GILBERTI: Correct. That's four.

23 THE COURT: That's four.

24 Now we started out earlier when he was 18. See,
25 that's wonderful. He started out at 18. He's now age 29.

1 He's charged with bail-jumping in Superior Court, Hudson County
2 at age of 30, and he was subjected to being sent to State
3 Prison for seven years with a 42-month parole disqualifier, but
4 the prosecutor recommended that he participate in a long-term
5 in-patient drug program;

6 At the age of 35 he's convicted of harassment by the
7 New Jersey -- strike that -- by the Jersey City Municipal Court
8 which he's required to do 240 hours community service.

9 Now that's the history. Am I right?

10 MR. GILBERTI: You're correct, your Honor,

11 THE COURT: I wanted to make sure I spelled it out
12 particularly for anybody who might be interested in hearing it.

13 So consequently, based upon that, what do you claim?

14 MR. GILBERTI: Your Honor, well, first, there was the
15 five --

16 THE COURT: Do you challenge any of the history?

17 MR. GILBERTI: I'm challenging the severity of the
18 history.

19 THE COURT: I'm not talking about that. You're
20 talking about the effect --

21 MR. GILBERTI: I'm not challenging the facts of the
22 history.

23 THE COURT: That's what I'm driving at.

24 MR. GILBERTI: No, I'm not challenging the facts of
25 the history.

1 THE COURT: Go ahead.

2 MR. GILBERTI: What I am challenging, your Honor, is
3 the severity of the history. The five offenses that you just
4 went through, they were all resolved on the same day, ended up
5 in -- originally a probationary sentence, and they were all
6 second and third -- they were all third and fourth degree and
7 municipal court level offenses, they were disorderly persons
8 offenses.

9 THE COURT: Not the drug matters.

10 MR. GILBERTI: The drugs that were involved there were
11 relatively small --

12 THE COURT: CDS within a thousand feet of school
13 property --

14 MR. GILBERTI: You're right there, your Honor, you're
15 right there.

16 But they gave -- they ended up -- ending up in 5
17 offenses that account for seven criminal history points ending
18 up in a probationary sentence. Now he violated that because of
19 his drug problem.

20 THE COURT: Regardless of what reason he violated it,
21 for which he later received a custodial term in the State
22 Prison --

23 MR. GILBERTI: Correct.

24 THE COURT: -- with a parole disclaimer.

25 MR. GILBERTI: But the net effect, your Honor, is,

1 even though there were intervening offenses or arrests -- and I
2 understand the legal significance of that -- what I'm
3 suggesting to you is, the way that the prosecution in the state
4 decided to resolve that matter overstates this thing. It was
5 not a -- originally it was not a custodial sentence. And
6 you're applying seven criminal history points for what were
7 relatively minor -- and again, in a hierarchical sense,
8 relatively minor criminal conduct --

9 THE COURT: This is not like it was armed robbery, I
10 understand, or rape --

11 MR. GILBERTI: Right.

12 THE COURT: -- or treason. I understand that. Go
13 ahead.

14 MR. GILBERTI: And that's the basis of my argument,
15 your Honor, that his criminal history is overstated. And when
16 you look at it --

17 THE COURT: But his criminal history has such
18 longevity. He started out -- I didn't bother to deal with the
19 juvenile matter in fairness, but since the age of 14 he has
20 been in and out of court.

21 MR. GILBERTI: That's correct, your Honor. But since
22 the age of 30, the only problems he had was violating his
23 probation and the harassment charge, which is a municipal court
24 matter in Jersey City. That's 10 years, your Honor. He did
25 attempt to resurrect his life during that period and was

1 attempting to correct things. And given the disparate
2 proportion of the sentence -- I mean, the points that he got
3 for what was relatively less important criminal history, we
4 believe that, one, it does overstate his life's work to
5 characterize him as a career offender based on the relatively
6 minor history there. This isn't a guy who was dealing kilo
7 amounts of drugs. This isn't --

8 THE COURT: But this is a guy who's been given,
9 apparently primarily in Hudson County, the benefit of the doubt
10 practically every time he appeared, and he appeared regularly
11 in the sense that I see nothing but probation, probation.
12 probation. At long last the prosecutor said, no more of this.

13 Isn't that basically it?

14 I mean, it wasn't a situation where he was hit at the
15 outset and continued to be so hit with custodial terms. He's
16 been given opportunities for rehabilitation throughout his
17 youth.

18 MR. GILBERTI: You're correct. But in the recent
19 years, your Honor -- and again, this gets back to my argument
20 about the distance from that, remoteness from that I think
21 that's also a factor here. So we believe that for the reasons
22 that we set forth in our sentencing memo, when you look at it
23 comparatively, you have the discretion -- if you sentence him
24 to the amount that's contained in his plea agreement which is a
25 Level 23, Criminal History V, he's going to be away for seven

1 to nine years. He has 84 to 105 months. That's more than
2 sufficient given his criminal history and given the fact
3 offenses in this case, and given the relatively minor amount of
4 drugs he's dealt with in his career to make the point, to send
5 a message to society from the standpoint of deterrence, it's
6 more than sufficient to punish him because he's going to come
7 out at age 46 and, you know, he's going to be an older guy
8 there, and we've argued about the recidivism rate as people get
9 older, and it will also permit him to rehabilitation in the
10 process, your Honor. So we believe that if you sentence him to
11 the underlying offense you can make the same point without
12 putting him away for 16 years when you're --

13 THE COURT: What specifically is the underlying
14 offense, now that you bring it up? What is it? Conspiracy to
15 distribute what?

16 MR. GILBERTI: It was PCP and heroin. And the amounts
17 were 11 grams of PCP, and something like 80 grams or 90 grams
18 of heroin. You're talking amounts that are less than several
19 ounces; three, four ounces, your Honor.

20 Again, this is street level matters. And again, I'm
21 not denigrating street level matters. When I was Chief of
22 Narcotics at the U.S. Attorney's Office across the street in
23 the '80s we would have sent this to the State. For whatever
24 reason, the Feds and the State are attempting to make a point
25 here. But you can make that same point by sentencing him to

1 the underlying offense, which is substantial.

2 THE COURT: Well, except that we have a response dated
3 March 6th, 2014 in direct reply to what you just said. And let
4 me read it to you so that you are aware of what I'm quite sure
5 your adversarial colleague will say when I give him an
6 opportunity to be heard; that is, he says on page 1: (Reading)
7 Jenkins distributed narcotics to an undercover agent in the
8 course of seven separate transactions. The quantity of PCP
9 involved in this case was significant, enough that the United
10 States Congress requires this Court to impose a statutory
11 mandatory minimum sentence of at least five years in prison.

12 That point is taken. All right?

13 In addition -- this is what is of interest to this
14 Court -- the quantity of heroin that Jenkins sold to the
15 undercover agent was enough to supply at least 3900 individual
16 drug addicts even by the most conservative estimate.

17 And why I say that is because you as part of your
18 argument indicate that what he sold was not that, let's say,
19 "Nicky Barnes," or another reputed drug dealer, or the one that
20 was just apprehended handed in Mexico. But you are aware of my
21 position with regard to drug dealing.

22 MR. GILBERTI: Yes, I am, your Honor.

23 THE COURT: And I believe that it is dangerous, so
24 dangerous that it is contagious, that it is destructive of all
25 of us. So that he was on the street is really of no moment to

1 me.

2 MR. GILBERTI: No, I --

3 THE COURT: He engaged in something that could kill so
4 many people and affect so many people. As I said before and
5 I'll say it to you again at the benefit of repetition: Drug
6 dealing in this country affects all of us because all of us, if
7 we're honest enough, know that someone whom we know or even
8 someone who we've been related to or even heard of, have been
9 affected by it, either by usage or by being an innocent victim,
10 or being an innocent victim of a drive-by shooting or mugging,
11 you know.

12 And so those -- and it hits everybody. It hits
13 everybody regardless of race or class or ethnicity, and it cuts
14 across borders. It is just -- it is a plague. And it does us
15 no good to say, well, he's a nice boy.

16 You see, I read a letter from someone saying, well,
17 I've known him for 16 years. He's always been nice.

18 As far as I'm concerned, no one selling drugs
19 willingly is nice.

20 Go ahead.

21 MR. GILBERTI: I'm not arguing that point. And to the
22 extent that you're relying on that information, that's hearsay
23 and I don't believe it should be relied on absent a hearing
24 where we can challenge it. But laying that aside --

25 THE COURT: You're talking about the 3900?

1 MR. GILBERTI: Yes, that information.

2 But laying that aside, your Honor, I'm not saying he's
3 a nice boy, that's not my argument.

4 THE COURT: You sent me a letter --

5 MR. GILBERTI: I sent you a letter in mitigation of
6 sentencing, and that was for part three of the structure. The
7 first one is fixing the --

8 THE COURT: What you're saying is that -- you're
9 saying that seven to nine is sufficient punishment. That's
10 what you're saying.

11 MR. GILBERTI: That's exact what I'm saying, your
12 Honor.

13 THE COURT: I see. The point is, you may have a
14 point -- I'm not saying do -- but you may have a point. He's
15 40 years of age. According to the table he probably has
16 another at least 30-plus, 40 years to go statistically unless
17 he has an untoward event that shortens his life expectancy. So
18 he's really middle age, you know. So the point is, how is he
19 going to spend the rest of his life? So far he's spent most of
20 his life in and out of jail. Whether it's momentarily or --
21 that's why I deliberately went down and chronicled the history.
22 So we'll see.

23 What else to do you want to tell me before I turn
24 it -- with regard to this issue, I want to hear from the
25 Assistant United States Attorney. Anything else you want to

1 tell me?

2 MR. GILBERTI: No. I just wanted to make sure that
3 his trend in his life was an upward trend at the time this
4 occurred. Now again, the 2009 municipal court thing, and from
5 2008 onward, you know, there was very little else. So we would
6 submit that to you, and that comes in at the -- you know, for
7 the interest of rehabilitation, the aspects of this thing, that
8 we can reclaim a life here.

9 THE COURT: He's been given ten-plus years of
10 rehabilitation attempts. It's almost mind-boggling to say,
11 knowing what Hudson County does -- I used to sit on the
12 Superior Court here in Excess. But this history is quite
13 interesting, that he was given so many times a chance to get
14 his act together.

15 Anyway, be that as it may.

16 MR. GILBERTI: Thank you, your Honor.

17 THE COURT: With regard to this issue.

18 MR. ALMONTE: Thank you very much, your Honor.

19 THE COURT: Yeah.

20 MR. ALMONTE: And as you already stated, you do have
21 discretion to depart downward, but the Government would urge
22 your Honor to not do so.

23 THE COURT: Why?

24 MR. ALMONTE: Well, your Honor went through all the
25 history, but just to put it in perspective, and I know you

1 started with the age of 18. I go back two more years. And
2 since the age of 16 to the age of 38 when he was arrested in
3 this case, he accumulated 17 convictions. And one was for
4 robbery; there were at least two simple assault; and seven drug
5 convictions.

6 THE COURT: In fairness, in fairness, I appreciate
7 you -- I deliberately did not go into the juvenile just from
8 the standpoint I figured, you know, even juveniles can be tried
9 as adults. But he wasn't, he was tried as a juvenile. So I
10 felt I would not consider that in fairness to him because, you
11 know, they're crazy teenagers.

12 MR. ALMONTE: That's a fair point, your Honor.

13 THE COURT: As a parent I know that. Go ahead.

14 MR. ALMONTE: So one of the points that the defense
15 made in favor of not applying the career offender guidelines is
16 that the amount in this case is small --

17 THE COURT: Right.

18 MR. ALMONTE: -- and that his prior convictions are
19 small.

20 THE COURT: Right.

21 MR. ALMONTE: There are two responses to that. As a
22 factual matter that's not correct. Your Honor took interest in
23 the 3900 -- or when I stated that the amount of heroin here --

24 THE COURT: Which is challenged by your colleague.

25 MR. ALMONTE: Right.

1 And your Honor presided over the plea hearing. During
2 that colloquy we went specifically and discussed the term
3 "brick" and what "brick" means. And that means that that
4 amount of heroin was packaged in individual glassine envelopes
5 so that it could be distributed to individuals. Therefore, one
6 brick is equivalent to 50 glassine envelopes for individuals.
7 There were 78 bricks of heroin.

8 THE COURT: How many?

9 MR. ALMONTE: 78.

10 THE COURT: 78?

11 MR. ALMONTE: So --

12 THE COURT: So therefore?

13 MR. ALMONTE: Therefore that's --

14 THE COURT: The mathematical calculation doesn't
15 require my having a hearing.

16 MR. ALMONTE: Exactly, your Honor. And it's also
17 stated in the Presentence Report.

18 So that's where we get the 3900 individual doses.

19 THE COURT: Well, let's assume -- I take your point.
20 Let's assume that that heroin was of that sufficient quantity,
21 so then it would have equated to 3900 hits. But how much is
22 enough in the context of reasonableness as far as sentence is
23 concerned? You follow what I'm saying?

24 MR. ALMONTE: I understand, your Honor.

25 THE COURT: What you're talking about, should I give

1 him 16 years at least according to your -- 188. Right?

2 MR. ALMONTE: Yes.

3 THE COURT: Or take him out to practically 20 in 235?

4 MR. ALMONTE: Your Honor, I --

5 THE COURT: That's the spread, isn't it: 188 to 235?

6 If I were to give him 235 that would be practically 20 years.

7 MR. ALMONTE: Correct.

8 THE COURT: Right?

9 Twenty times 12, that's what I'm saying. So that's no
10 big deal. You follow what I'm saying?

11 But I look at it in what I hope to be a reasonable
12 situation. There's no parole in our federal system.

13 MR. ALMONTE: That's correct.

14 THE COURT: So we expect him to do at least 85 percent
15 of whatever time I do give him. And at the same time, the
16 goals are to punish as well as to afford, if necessary, or if
17 appropriate, if appropriate, not if necessary, if appropriate,
18 the chance to rehabilitate oneself.

19 MR. ALMONTE: Correct.

20 THE COURT: So if I give him 20 years I just confine
21 him to being a senior citizen in jail. Right?

22 MR. ALMONTE: Correct.

23 THE COURT: Because he's 40 now. And if I come down
24 to 188, he has spent all of his youth and practical middle age
25 in jail too. Which one does he deserve? And that's the

1 question we have to deal with in the context of the factors
2 that we analyze for sentencing and the context of trying to
3 afford him a reasonable sentence. And your colleagues speaks
4 that for the last more or less 10 years he's been relatively
5 clean.

6 MR. ALMONTE: Your Honor, that's actually not correct.
7 When you take into account --

8 THE COURT: Let me hear what you have to say.

9 MR. ALMONTE: Well, when you take into account the
10 period of incarceration, I believe that offense was in 2004.
11 And he was released on parole, then that parole was revoked and
12 he was sent back to jail until May of 2008. So the starting
13 point is May 2008 because that's when he was released from
14 prison. And then about a year later he again committed another
15 crime, that one concerns harassment. And then two years after
16 that he committed this crime. So he hasn't lived -- it's not
17 as if he lived 10 years crime-free in society. Part of that
18 was incarceration.

19 THE COURT: Let me find out something from you,
20 because where is the original plea agreement? Let me see the
21 original plea agreement.

22 MR. ALMONTE: I don't have the original with me.

23 THE COURT: I only have -- I only have a part of it --
24 what did we finally end up in the plea agreement with the
25 level?

1 MR. GILBERTI: It was Level 23.

2 THE COURT: I can't hear you.

3 MR. GILBERTI: Level 23.

4 THE COURT: 23, with a Criminal History of V?

5 MR. GILBERTI: Correct.

6 THE COURT: Because I don't see how it was reached in
7 my copy of the presentence investigation. It stops at 31, and
8 I didn't...

9 MR. ALMONTE: Your Honor, on page 8 --

10 THE COURT: Page 8?

11 MR. ALMONTE: -- paragraph 10 it sets forth what the
12 agreed total --

13 THE COURT: I'm with you now. Yeah, right. So it's
14 either 31 or 23, depending on what I determine.

15 MR. ALMONTE: Correct, your Honor.

16 THE COURT: Oh. I'm with you now. I'm with you now.
17 All right.

18 What say you with regard to the earlier offense, the
19 earlier -- the earlier felony?

20 MR. ALMONTE: Well, there were three convictions that
21 are the predicate --

22 THE COURT: That's what -- I'm examining the
23 predicate. Go ahead.

24 MR. ALMONTE: -- for the career offender status.
25 There was one on June 9th, 1995, and that's found in paragraph

1 65.

2 THE COURT: Right.

3 MR. ALMONTE: And that was for distribution.

4 THE COURT: That was, as I recall it, within a
5 thousand feet, wasn't it?

6 MR. ALMONTE: That's correct, your Honor.

7 THE COURT: At the age of 21 --

8 MR. ALMONTE: Correct.

9 THE COURT: -- probably in Jersey City, but anyway, in
10 Hudson County, he got five years.

11 MR. ALMONTE: Correct.

12 THE COURT: All right. Go ahead.

13 MR. ALMONTE: And he didn't learn his lesson then,
14 your Honor, because --

15 THE COURT: Wait. Slow up, slow up, slow up, slow up.
16 We do have some idea of what it was. He distributed
17 cocaine. He distributed cocaine of less than a half an ounce.

18 MR. ALMONTE: That's correct, your Honor.

19 THE COURT: At the same time he allegedly possessed
20 heroin of less than a half ounce as well. Okay. All right.

21 Go ahead. All right. Now what's -- now that's the
22 first. What's the second?

23 MR. ALMONTE: The second predicate offense is found on
24 paragraph 76.

25 THE COURT: At the age of 28.

1 MR. ALMONTE: Correct.

2 THE COURT: Again, he's charged with and found guilty
3 of possession with CDS with attempt to distribute within a
4 thousand feet of school property in Hudson County, and he is
5 distributing cocaine as well as heroin.

6 MR. ALMONTE: As well as -- no, that's correct, your
7 Honor, just heroin and cocaine.

8 THE COURT: Right. Is that right?

9 MR. ALMONTE: Yes, your Honor.

10 THE COURT: And he gets five years special probation.
11 That's when I was telling you about what happened in Hudson
12 County Superior Court.

13 All right. And now we have --

14 MR. ALMONTE: Then there's one more, your Honor.

15 THE COURT: Which is?

16 MR. ALMONTE: In paragraph 88.

17 THE COURT: Again, possession of CDS with attempt to
18 distribute within a thousand feet of school property at age of
19 29, and there he's found with six vials of cocaine and 70 bags
20 of heroin.

21 MR. ALMONTE: That's correct, your Honor.

22 THE COURT: Right?

23 Go ahead.

24 MR. ALMONTE: So two points, your Honor. As a factual
25 matter I disagree that those were small offenses. But even if

1 your Honor --

2 THE COURT: He didn't say they're small offenses, he
3 said they're small amounts.

4 MR. ALMONTE: Small amounts.

5 THE COURT: Right.

6 MR. ALMONTE: But if your Honor were to consider those
7 small amounts, legally the Third Circuit has affirmed cases
8 where the amounts were even smaller. I cited one particular
9 case --

10 THE COURT: I know, but that's all within the
11 discretion I have here though.

12 MR. ALMONTE: Of course.

13 THE COURT: I mean, I could call something half full;
14 you might call it half empty. Both of us should be affirmed
15 because if we did a reasonable analysis you would come up with
16 a conclusion. Right?

17 MR. ALMONTE: But just to highlight one case, your
18 Honor, in United States vs. McCleve (phonetic), which is cited
19 in the memorandum, in that case a defendant was sentenced to
20 151 months and the amount that was distributed was only 3.7
21 grams of heroin.

22 THE COURT: Yeah. And normally I would say that's a
23 good discretion of that particular judge because normally I
24 would not go that far.

25 MR. ALMONTE: I understand. But I also wanted to

1 point out that there is legal support for maintaining the
2 career offender status in this particular case.

3 THE COURT: That's one judge called it one way and,
4 you know, my problem -- we'll deal with that issue -- we'll
5 deal with whether I determine him to be a career offender. And
6 let me hear again from the defense and then I will have to tell
7 you what I think.

8 MR. ALMONTE: Thank you, your Honor.

9 THE COURT: I'm talking only about this issue of -- do
10 you wish to respond?

11 MR. GILBERTI: Just, you hit the nail on the head
12 on -- I'm sorry -- on the McCleve case and the cases he cited,
13 you're right, your Honor, those both came from the same Court
14 of Appeals judge. Neither one of them is precedential --

15 THE COURT: That's not the point. We're dealing with
16 real life.

17 MR. GILBERTI: I understand.

18 THE COURT: All I said is that one judge called what
19 he had in front of him differently, and that doesn't mean that
20 he or she was wrong or incorrect, or right. It just means that
21 that's what that person did. And like I said, that's the
22 difference between half full and half -- it's not a
23 difference -- half full and half empty.

24 I'll tell you what my main problem with this case is
25 as far as you are concerned: Whether the amounts are

1 insignificant or not, according to you, is a secondary issue.

2 You know what is significant to me? That over a
3 period of 10 years he dealt with drug traffic within a thousand
4 feet of school property, and that seemed to be his hallmark in
5 trade. And I'd be a fool if I didn't say that that didn't
6 impress me, because he is providing opportunity for persons
7 well under adult age to be exposed to drug traffic.

8 MR. GILBERTI: May I answer that?

9 THE COURT: You may. You may respond to it. You
10 don't answer it, you may respond to it.

11 MR. GILBERTI: Yes.

12 THE COURT: And as I said to you before, the
13 drug-trafficking has decimated too much of our society, both
14 here and in Jersey City and throughout this state and
15 throughout other states and other countries. So the point is,
16 drug traffic is a contagion, as I said before. And one who
17 willingly does it in this situation is doing it out of
18 basically two reasons: One, he needs to support his own habit;
19 and/or greed.

20 But go ahead, respond. What do you have to say?

21 MR. GILBERTI: No. Your Honor, having been on the
22 defense side for a number of years it's hard in a place like
23 Jersey City not to be charged with dealing, if you're dealing.
24 And again, I'm not saying it's good to be dealing. But it's --
25 it would be -- I would hazard to say you probably can't find an

1 area that's not a hundred feet -- a thousand feet from a school
2 in Jersey City, and a lot of times prosecutors use that to up
3 the ante to leverage pleas.

4 So I understand your concern, and I understand the
5 purpose of the law. The purpose of the law was a shield; it
6 was to protect kids in school, to keep them from having -- from
7 people from preying on them and dealing with a school. But
8 over the years it's become a sword the prosecutors have used.
9 They've manipulated transactions or in some places, as I said
10 in Jersey City, you probably can't be more than a thousand feet
11 from a school. So I think --

12 THE COURT: As you reminded me, you know, that coming
13 from you is hearsay, isn't it?

14 MR. GILBERTI: Absolutely, your Honor.

15 THE COURT: All right.

16 MR. GILBERTI: But so was your observation.

17 (Laughter.)

18 MR. GILBERTI: Anyway, your Honor, I understand. I'm
19 not --

20 THE COURT: The observation I made was just that I
21 conclude that the purpose of the law is to hopefully inhibit or
22 prevent drug traffic to those who are very susceptible to such
23 traffic because they are of young age, and those are school
24 children going to and from school.

25 MR. GILBERTI: I understand. But I made my comments

1 to it. Thank you.

2 THE COURT: Okay. As far as I'm concerned, based upon
3 the circumstances of these offenses occurred in the space of 10
4 years involving the specific thrust of drug-trafficking within
5 a thousand feet of school property and in amounts that -- --
6 whether they be called "insignificant" by any others, by one's
7 definition, they are significant as far as I'm concerned in the
8 fact that they cause danger and damage and possibly death to
9 those who willingly or unwillingly participate, and it shows a
10 history which is that of repetition. As far as I'm concerned,
11 that's career -- that affords him career offender status, and
12 the calculation is 31 with a Criminal History of VI. As far as
13 I'm concerned, he is a career offender in the context of
14 drug-trafficking.

15 All right. That said, I'll hear from you again before
16 I sentence him.

17 MR. GILBERT: Well, against that backdrop, your Honor,
18 you ought to sentence him at the bottom end of the guideline
19 range --

20 THE COURT: I intend to.

21 MR. GILBERTI: -- because I think you've hurt him
22 enough at this point.

23 THE COURT: No, no, no, you misunderstood that. I
24 have not hurt him; he has hurt himself.

25 MR. GILBERTI: I understand.

1 THE COURT: When he looks in the mirror he'll find
2 someone he can complain about. You know, he doesn't complain
3 about Walls or anybody, he or the prosecutor or the Government,
4 he complains about who he sees in that mirror.

5 MR. GILBERTI: I understand. I wasn't commenting on
6 your --

7 THE COURT: Unless he's in denial.

8 MR. GILBERTI: I was commenting on your intent, I was
9 commenting on the result, that the damage was enough. But we'd
10 ask that he be, for all the reasons set forth in the letters
11 and everything else, he be sentenced at the bottom end of the
12 guidelines.

13 THE COURT: And I said I would do that.

14 Does your client wish to be heard?

15 I'll hear from you.

16 MR. GILBERTI: Do you want to say something?

17 THE DEFENDANT: State my name?

18 MR. GILBERTI: No. You can just tell him what you
19 want to say.

20 THE DEFENDANT: I want to apologize to the Court for
21 my actions. I want to apologize to my family.

22 First of all, your Honor, I want to let you know that
23 I'm accepting responsibility to my actions that I did things
24 that I did in my life. I know they wasn't right. I did them.
25 I'm here to accept responsibility for them. Once again, I

1 apologize to the Court and my family. I'm sorry I had my
2 family come all the way from South Carolina for a day such as
3 this.

4 THE COURT: My concern is -- and I appreciate what
5 you're telling me now -- my concern is that, as I've pointed
6 out I believe almost repeatedly to your attorney, that in the
7 course of your criminal history, you were given numerous
8 opportunities for rehabilitation and all of them ended up with
9 probation being revoked for the most part, unless I have
10 overstated it. I don't think I did. And that's what bothers
11 me about you in this; is that you were given so many
12 opportunities. You know, you're age 40 now, but long before
13 that you were out of Pampers. You were not a child. That's
14 why I told the attorney, I was not dealing with your juvenile
15 history. In fairness to you, I was not dealing with your
16 juvenile history which he wanted me to consider. I did not
17 consider that. I'm considering your adult history.

18 So tell me about that in the context, why did you blow
19 those chances?

20 THE DEFENDANT: Yes, I wanted to speak on that.

21 Your Honor, really, I really didn't blow those
22 chances. I was forced out of those chances. When the judge in
23 Jersey City gave me a special probation and a long-term drug
24 probation, I attended to that program. I was there at
25 Integrity House. There's records that show you I as there. I

1 had a counselor. Her name was Amotalab Mahaney (phonetic). I
2 don't know what was her reasons, but if you go back deep into
3 the records, it was stated that the way she was attacking me
4 was from -- she revealed her hand and told me that when I
5 entered the drug program that I was to be watched. So when she
6 told me that, I found out who was supposed to told her who I
7 was watched by, and it was supposed to be from the prosecutor.

8 So once I found out that, I had got -- I wrote a
9 letter to the Ethic Committee in Washington D.C. So when they
10 came, they came to Jersey City, the court, on my behalf. I
11 wasn't -- my opportunities to go back to the program was --
12 that's what I wanted to do, but I was forced out by her.

13 THE COURT: I know. But, good buddy, we're not
14 talking about the program. We're talking about your later
15 commission of crimes. You know, that you had some problems
16 with that person in Integrity House is not what I was talking
17 about. I'm talking about the fact that you were given
18 opportunity to rehabilitate yourself. The next thing you know
19 you're back in court. That's what I'm talking about. Follow
20 what I'm saying?

21 THE DEFENDANT: Yes.

22 THE COURT: That's what I'm talking about. I'm not
23 talking about your experience at Integrity House or the fact
24 that somebody was out to get you there.

25 You're not claiming that she made you commit crimes,

1 are you?

2 THE DEFENDANT: No. I specified that because you said
3 I was given multiple times at probation.

4 THE COURT: The point is, probation gives you an
5 opportunity to get your act together and start living hopefully
6 a normal legal life, that's what I meant by that. Whether
7 you're in Integrity House or outside Integrity House, that's
8 what I mean by that. That's what I meant by that. That's what
9 I mean by it. So I'm talking about that, you know, after you
10 were given probation, the next thing you know you're back in
11 court for another event, another circumstance.

12 Go ahead.

13 THE DEFENDANT: Yes, you right. I could admit that me
14 coming back-and-forth into the system, I had a problem as of my
15 own addiction, falling to certain things that I fell to, to
16 commit different crimes to come back into the system. I tried.
17 I tried even before this case was up, before I caught this
18 case.

19 THE COURT: All right. Anything else you want to tell
20 me?

21 THE DEFENDANT: I would hope that you be leniency
22 towards my sentence. And once again, I want to thank the
23 Court. I want to apologize to the Court and my family.

24 THE COURT: All right. Thank you.

25 THE DEFENDANT: You're welcome.

1 THE COURT: Thank you, sir.

2 Let me hear from the Government's representative.

3 MR. ALMONTE: The Government doesn't have anything
4 else to add, it simply incorporates the March 6th, 2014 letter
5 that was addressed to your Honor.

6 THE COURT: Mr. Jenkins, stand, please.

7 You are 40 years of age. And before you reached that
8 age, well before you reached that age you have been involved in
9 criminal activity for the better part of your adult life.
10 You're here before me because you pled guilty to conspiring
11 planning to distribute, to sell and distribute PCP and heroin,
12 and that arose out of your having sold 11.8 grams of PCP and
13 89.6 grams of heroin to a confidential informant. That's why
14 you're here precisely before me.

15 But as I said, we discussed your criminal history. I
16 took time to place your entire adult criminal history on the
17 record so that it would be the background in order for me to
18 listen to arguments of counsel to determine whether you should
19 be a career offender. And I found that based upon over a
20 period of time, substantial period of time, you have
21 inevitably, almost in a chronic situation, found fit to attempt
22 to or actually sell or distribute drugs within 1,000 feet of
23 school property, and they form the basis on at least three
24 occasions where you have been convicted of such crimes, and
25 they are felonies under our law, and they under a calculation

1 require me to determine that you are a career offender.

2 And I think realistically based on my analysis you are
3 a career offender. As I said, you used the same spot. Now,
4 your attorney argues, well, any spot within Jersey City is
5 within a thousand feet of school district.

6 Well, that really is of no moment. The point is, you
7 were selling -- attempting to sell narcotics, as I've said
8 before, something that is destructive to too many people for me
9 to ignore that. And the amounts are sufficient as far as I'm
10 concerned to be destructive to too many innocent people, people
11 who actually use those drugs, people who are relatives of
12 people who use them, people who are acquaintances. We can
13 discuss the myriad ways in which drug activity and drug usage
14 has damaged, you know, our society, whether it be of one
15 race -- and it cuts across all races, so it's not a question of
16 our race, it's a question of the human race -- and it cuts cut
17 city boundaries and it cuts off state and national boundaries.
18 It is just destructive. And for that, society, when it has the
19 opportunity to punish people who voluntarily engage in that
20 activity, should provide appropriate punishment.

21 So that is the underlying rationale for my determining
22 that you are a career offender and also the underlying
23 rationale for my imposing the sentence I'm about to impose upon
24 you. You have to be punished so that it stings, and that is to
25 stop you and to punish you on behalf of society and hopefully

1 stop others from continuing down this path of drug-trafficking.

2 Those who think that you shouldn't be so punished for
3 such drug-trafficking are, respectfully, in a state of denial.
4 Because there's no question that drug-trafficking to me is as
5 onerous and dangerous as any other type of crime short of
6 deliberate immediate murder.

7 So we punish you in this way so that it stings, no
8 more than is necessary, but no less than is necessary because
9 it is of such importance to society. I mean, there's no point
10 in repeating what I've said to all of you in our discussion of
11 your case this morning. Drug-traffic is destructive. This is
12 not a question of crack cocaine versus cocaine. We're not
13 dealing with a situation where the sentences would be
14 disparate. This is not that. This is a question where we're
15 dealing with a person who willingly sold drugs over a period of
16 10 years, and I think the appropriate sentence is what I'm
17 about to say.

18 At the same time, even though the punishment should
19 sting, it doesn't mean that you will spend the rest of your
20 life in jail. You have according to the mortality tables
21 probably at least 30 to 40, possibly 50 years, 50-plus years to
22 go unless something untoward happens. Unless some accident
23 happens to you, unless some serious injury occurs to you, you
24 have half of your life ahead of you, and so hopefully you will
25 spend that time getting your act together.

1 But pursuant to the Sentencing Reform Act of 1984,
2 it's my judgment that you, Daniel Jenkins, are hereby committed
3 to the custody of the Bureau of Prisons to be imprisoned for a
4 term of 188 months.

5 Upon release from imprisonment, you are to be placed
6 on Supervised Release for a term of five years. Within 72
7 hours of release of the custody of the Bureau of Prisons you
8 are to report in person to the probation office in the District
9 in which you are released.

10 Now, while you are on Supervised Release, you're not
11 to commit any other federal, state, or local crime; you may not
12 possess any firearm or any other dangerous device; you may not
13 possess any illegal controlled substances; and you are to
14 comply with the other standard conditions that have been
15 adopted by the Court.

16 I'm going to require that you submit to one drug test
17 within 15 days of the beginning of your period of Supervised
18 Release.

19 Now, you are to refrain from the illegal possession
20 and use of drugs, including prescription medication not
21 prescribed to, or in your name; and the use of alcohol; and you
22 are to submit to urinalysis or other forms of testing to ensure
23 compliance.

24 It is further ordered that you are to submit to
25 evaluation and treatment on an outpatient or in-patient basis

1 as approved by the United States Probation Office. You are to
2 abide by the rules of any such program and remain in treatment
3 until you've satisfactorily discharged by the Court.

4 You don't have the ability to pay a fine; I so make
5 that determination, and I will waive the fine in this matter.
6 But you are ordered to pay to the Court a total special
7 assessment of \$100.00, which is due immediately.

8 You have the right to appeal what I've done pursuant
9 to Section 3742 of Title 18 United States Code, and if you're
10 not able to pay you may request the Clerk of the Court to file
11 a Notice of Appeal on your behalf.

12 I recommend that the Bureau of Prisons designate a
13 facility for service of this sentence as near as possible to
14 your home address.

15 Anything else?

16 MR. GILBERTI: Yes, your Honor. We'd ask that you
17 recommend to the Bureau of Prisons --

18 THE COURT: Come up.

19 MR. GILBERTI: I'm sorry.

20 THE COURT: You ask what?

21 MR. GILBERTI: We ask that you recommend to the Bureau
22 of Prisons that he be assigned to the Residential Drug Abuse
23 Program, the 500-hour comprehensive program in the Bureau of
24 Prisons. He needs a judge's recommendation to be --

25 THE COURT: He has that recommendation.

1 MR. GILBERTI: Thank you, your Honor.

2 THE COURT: It's called what now?

3 MR. GILBERTI: The Residential Drug Abuse Program.

4 THE COURT: All right. I so recommend.

5 UNIDENTIFIED AUDIENCE MEMBER: Jesus.

6 MR. GILBERTI: And also -- and I am only doing this,
7 not to incur your wrath from earlier, but I've had situations
8 where the Bureau of Prisons has given me a hard time -- I would
9 ask you to give him credit on the record for the time he served
10 since September 12th of 2012.

11 THE COURT: If he's been in federal custody since
12 September 12th did you say?

13 MR. GILBERTI: Yes.

14 THE COURT: Of 2013?

15 MR. GILBERTI: 2012.

16 THE COURT: 2012?

17 He's entitled to such --

18 UNIDENTIFIED AUDIENCE MEMBER: Oh God. Oh, God. Oh
19 Jesus. God. Oh Lord. Jesus, Lord, help. Oh, alleluia, help
20 me.

21 THE COURT: He's entitled to such, and I give him
22 credit for it.

23 MR. GILBERTI: Okay, thank you. The only reason I
24 bring it up is I've had disputes with the Bureau of Prisons in
25 the past where it wasn't on the record.

1 THE COURT: No, I have no problem with that. As I
2 say, if he's been in federal custody since September 12th of
3 2012, he's entitled to credit toward the sentence.

4 MR. GILBERTI: Thank you, your Honor.

5 THE COURT: That's practically two years.
6 Anything further from anyone?

7 MR. ALMONTE: Nothing from the Government, your Honor.

8 THE COURT: All right. So be it.

9 He's been sentenced on a Level 31 with a Criminal
10 History of VI.

11 MR. GILBERTI: I think his family came a long distance
12 today. Will they be able to see him downstairs in the bullpen
13 for about a --

14 THE COURT: I don't know, that's up to the marshals.
15 That's up to -- I doubt it.

16 A MARSHAL: No. It's not allowed.

17 THE COURT: I'm sorry.

18 (Conclusion of proceedings.)

19 ooOoo

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